

United States District Court
For the First Circuit

No.

05 CV 10474 GAO

Ricardo Sampson
Petitioner,

V.

Carmen Picknally
Assistant District Attorney
For the Commonwealth of Massachusetts
Respondent,

RECEIPT # 12692
AMOUNT \$ 500
SUMMONS ISSUED NA
LOCAL RULE 4.1 -
WAIVER FORM -
MCF ISSUED -
BY DPTY. CLK. M.P.
DATE 3/11/05

MAGISTRATE JUDGE RBC

Petition for Writ of Habeas Corpus
AD-Subjiciendum Against False
Imprisonment Under Illegal Federal Processes

Brief for Petitioner

Pro-se: R. Sampson
Ricardo Sampson
26 Long pond Rd.
Pro-se"

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United States District Court
District of Massachusetts

Ricardo Sampson
Petitioner,
V.

Habeas Corpus Action
No: _____

Carmen Picknally
Assistant District Attorney
For the Commonwealth of Massachusetts
Respondent,

Petition for Writ of Habeas Corpus AD-
Subjiciendum Against False Imprisonment/
Under Illegal Federal Processes

Jurisdiction:

Jurisdiction of this Habeas Corpus
Federal Court is invoked pursuant to United
States Constitution, Article 1, § 9 Clause 2;
Article 6, Clause 2 and 3; 4th 5th, and 14th
Amendments; Title 28 [U.S.C.] §§ 2241, 2243

<Habeas Corpus>

"The great purpose of the writ of habeas
Corpus is the immediate delivery of the
party deprived of personal Liberty, and
Hence it is Available on when Granting
the Writ



(Jurisdiction)

Would result in the Petitioner's immediate release from custody."

"PROMPT" "To act immediately," "Responding on the instant"

Magana - Pizano V. INS. 152 F.3d 1213 (1998) At page 1218 "The Suspension Clause provides that: "The privilege of the writ of Habeas Corpus Shall Not be Suspended unless when in Cases of Rebellion or invasion the Public Safety may require it." U.S. Const., Article I, § 9, Clause 2."

"Although we assess the writ (of Habeas Corpus) which the Constitution Protects against Suspension as it exists today, Rather than as it existed in 1789, See: Felker V Turpin, 518 US. 651, 664; 116 S.Ct. 2333, 135 L.Ed 2d. 827 (1996) Historical Perspective is important"

"Thus, Chief Justice Marshall implied a Duty upon Congress to provide for the writ (of Habeas Corpus) noting that, "For if the means be not in existence, The Privilege itself would be lost, Although No Law for its suspension should be enacted. See: Steward V Martinez Villareal U.S. —, 118 S.Ct 1618, 1622, 140

(Jurisdiction)

L. Ed. 2d. 849 (1998) "It is Automatic that 'The power to award the writ of Habeas Corpus by any of the Courts of the United States, must be Given by written Law' (Scalia, J. dissenting)

Harris V. Nelson — US —

The writ of habeas Corpus is the fundamental instrument for Safeguarding individual freedom against arbitrary [394 US 291] and lawless state action. Its pre-eminent role is recognized by the admonition in the Constitution that: "The Privilege of the Writ of Habeas Corpus shall not be Suspended. US. Const, Art 1 § 9, cl 2. The scope and flexibility of the writ — its Capacity to reach all manner of illegal detention — its ability to cut through barriers of form and procedural mazes — have always been emphasized and Jealously guarded by Court and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of Justice within its reach are surfaced and Corrected

(Jurisdiction)

Foot note

"Habeas Corpus cuts through all Forms and Goes to the very tissue of the Structure. [it] comes in from the outside . . . and although every form may have been preserved open the inquiry whether they have been more than an empty shell."

Constitutional Claims

Due Process

See: Frazier V. Garrison Cite as 980 F.2d 1514 (5th Cir 1993) The Fourteenth Amendment forbids government conduct that deprives "any person of Life, Liberty or property without due process of law". Due process has two major meanings: First, substantive due process may require courts to void certain types of government action that infringe on individual rights and individual freedom of action; Second, procedural due-process may require government to assure that individuals are afforded certain procedures before they are deprived of Life, liberty, or property.

Petition For Writ of Habeas Corpus

Grounds Relied Upon For Issuance of the Writ

< Three issue Presented >

1. Harmful error resulted from the trial judge's refusal to instruct the jury on an arrestee's use of Self-defense against an officer's use of excessive or unnecessary force
2. Violation of the petitioner's Federal Constitutional rights to a Prompt and Speedy trial, Guaranteed by the Sixth (6th) Amendment US Constitution
3. Police Misconduct by the arresting officer (Michael White)

ON November 25, 1998, the petitioner was arrested in the City of Springfield, Mass. He was Falsely Accused and Falsely Charged by officer Michael White of acts in Violation of G.L.c 265, §18(b) armed assault with intent to Murder and Violation of G.L.c 265 § 15A(b) assault and battery by means of dangerous weapon

and in Violation of G.L. c 265 § 13D assault and battery on a police officer. and in Violation of G.L. c 90 § 25 Failure to Stop a motor Vehicle

Court Proceedings Below

On February 9, 1999, a Hampden County grand jury returned indictments charging Ricardo Sampson ("Defendant") with armed assault with intent to murder in Violation of G.L. c 265 § 18 (b), assault and battery by means of a dangerous weapon in Violation of G.L. c 265 § 15a(b) assault and battery on a police officer in Violation of G.L. c 265 § 13D. and Failure to Stop a motor Vehicle in Violation of G.L. c 90 § 25

The indictments were tried before the Superior Court Judge Judd D. Carhart, from November 30, 2000 to December 1, 2000. The jury returned a Verdict of not guilty on the charge of armed assault with intent to murder and Verdicts of guilty on the Charges of assault and battery by means of a dangerous weapon, assault and battery on a police officer. and failure to stop for a police officers

ON the charge of assault and -
- battery by means of a dangerous weapon
the defendant was sentenced to three to
Five years incarceration in state prison
On the Charge of assault and battery on
a police officer he was sentenced to
two years in the House of Correction to
run concurrent with the sentence on
assault and Battery by means of dangerous
weapon. The charge of failure to stop
for a police officer was place on file.

The defendant was represented At
trial by Attorney Robert Gordon, of
Springfield; the Commonwealth by
Carmen Picknally, Assistant District
Attorney. After timely notice of Appeal,
the appeal from the judgments was
entered on the docket of the Appeals
Court February 7, 2002. On October 10, 2003
the Appeals Court issued a Memorandum
and Order. Pursuant to Rule 1:28 in
which it affirmed the convictions.
Defendant applied for Further
appellate review on Nov 4, 2003.
"Judgments Affirmed" (Exhibit F)

Statement of Facts

The convictions in this case are based on

an incident November 25, 1998, between the defendant and a Springfield police officer named Michael White, who resigned from the police force about six months after this incident.

A year or two before this incident officer white had threatened "To get" the defendant. On that occasion, Mr Sampson was standing in front of his Cousin's business and Officer White assaulted the defendant and threw him against the wall saying "You look like a guy who would rob a lady of her ring at a convalescent home." At that time Mr Sampson did not know his assailant was a police officer, so he "Flashed the person off" When he realized that the man was an officer, he froze. Officer White said he was "going to get him" Later, Mr. Sampson learned that officer White was known in the area as "Robocop" and that officer had a serious psychiatric problems.

ON the evening of November 25, 1998, officer white was driving a marked police cruiser in the Mason Square Section of Springfield. Officer Richard Ward was with him. The officers observed an

... automobile traveling north on Eastern Avenue in excess of the speed limit. They stopped the car, pulled the cruiser up behind it, and got out of the cruiser. As they approached the car on foot, it sped away. The officers got back in the cruiser and pursued the car across Wilbraham Road and State Street and into the driveway of Rebecca Johnson School. Ricardo and two others fled the car. Michael White testified that he chased Mr. Sampson on foot for about three blocks. He said he grabbed the defendant, threw him to the ground, and wrestled with him. He said the defendant was combative flailing his arms, punching, kicking and screaming. He said he was on one knee, attempting to turn the defendant over onto his stomach, and the defendant was on his back, tilted to the side, facing the officer, when the officer felt several blows to his left side. Michael White said he sprayed Mr. Sampson with a short burst of pepper spray and he became compliant. Michael White admitted that he was angry at the defendant. Michael White said that as

he had the defendant stand up, he heard something on the ground and saw a large buck knife with a blunt tip, which the officer seized. He then took Mr. Sampson back to the cruiser. Michael White testified that after the defendant had been placed in the cruiser, he felt a pain in his left side and Officer Ward pointed out some holes in the left side of his uniform shirt. Michael White was not a police officer at the time of trial. Officer White was wearing a bullet proof vest under his shirt, which consisted of a canvas vest into which two pieces of Kevlar are slipped, one in the front and one in the back. There was a cut in the canvas covering. Michael White testified that there were no marks on the Kevlar itself, but Officer Ward said there was a mark on the Kevlar. Officer Ward did not see the knife until Officer White brought it back to the cruiser.

Noted:

Kevlar will not protect the wearer from the impact of a knife. It protects the wearer from a spinning projectile (like a bullet) by dispersing the force

of the impact throughout the entire area of the Vest.

Ricardo Sampson testified on his own behalf. On November 25, 1998, he was in a car on Eastern Avenue talking with two men from whom he was buying marijuana. When they saw the cruiser, the men jumped into his car and suggested that he drive around the block. When the cruiser began to follow his car, Mr. Sampson fled because he did not have a driver's license and because one of the men had marijuana.

The defendant stopped his car in front of the Rebecca Johnson School and ran down Bowles Street, with Officer White in pursuit. He said he stopped because Officer White threatened to "blow some holes in his fucking legs" if he did not stop running. Officer White told Mr. Sampson to kneel down and lay forward, and put handcuffs on him, hurting his shoulder.

Officer White picked the defendant up off the ground while he was handcuffed and his shoulder was hurting. The defendant was upset and called him

"Every name in the book Officer White brought the defendant's hands high enough up to hurt him. He picked the defendant off the ground and sprayed pepper spray (which the defendant called 'mace') in his eyes while he was hand cuffed. The officer walked the defendant toward the cruiser with the defendant in a bent over position with his hands above his head and his face close to the ground. The officer said, "I told you I was going to get you". The officer brought Mr. Sampson to the cruiser, searched him, and took his knife out of his jacket pocket.

The knife was a work knife, with a tip had been blunt before that day. The defendant had carried the knife for more than seven years. The defendant denied taking the knife out while he was on Bowles street and said he never tried to use the knife on Officer White. As the defendant was placed in the cruiser, he complained about his eyes burning from the pepper spray. Officer White knew that cool air has a soothing effect on the pain and discomfort caused by pepper spray. Mr. Sampson said the temperature

Inside the cruiser was 75 to 80 degrees and Officer White rolled up the windows, turned the heat on and left him in the Cruiser for about 15 to 20 minutes. His eyes were burning and he felt Miserable. Michael White testified that a back window in the Cruiser was open, but Officer Ward acknowledged that both the back windows and the front windows were closed, and the heat was on.

While the officer's attended ~~to~~ the towing of the defendant's car, the defendant was banging his head against the window of the cruiser to get Officer Ward's attention, yelling, "YO, open the damm window. I am Suffocating in here," Mr. Sampson said that Officer White open the back door of the Cruiser and sprayed his face again with the Pepper Spray.

< Argument >

I

< Violation of the petitioner's Federal Constitutional rights to a prompt and

Speedy trial, Guaranteed by the Sixth 6th Amendment US Constitution

The prosecutors and the court judges, intentionally Delayed the public trial until the passing of (2) years in Violation of the petitioner's Federal Constitutional Right to a Prompt and Speedy trial, Guaranteed by the Sixth 6th Amendment, US Constitution. The trial Court Lost Criminal Jurisdiction over the case after the passing of (6) months Mass Gen. Law. Chapter 277 § 73

The recorded Days of Delay was [735] Days. Under the Federal Supreme Court decision's, the [B]urden was on the prosecutors to bring the case forward within the 180 Days from the Date of Arrest of the petitioner, they did not perform their duties as the laws Mandates

Lets go to the State Statute Mass. R. Crim. P. 36 "The defendant is entitled to dismissal of indictment due to the Failure of the Commonwealth to try him within one year after the return date in Court.

Generally, the right to a speedy trial

attaches and computation of the delay begins when you are arrested or when you are arraigned on an information or indictment, whichever occurs first. IN: Barker V. Wingo 407 US 514, 92 S.Ct. 2182, 33 L.Ed 101 (1972) the Supreme Court identified Four Factors which a court should consider on case-by-case basis to determine whether there has been a denial of the right to a Speedy trial. These factors are (1) the length of the delay (2) the reason for the delay (3) the defendant's assertion of or failure to assert the right to a Speedy trial. and (4) the presence or absence of prejudice to the defendant from the delay. Although none of these factors has any "talismanic qualities," they are interrelated and "must be considered together with such other circumstances as may be relevant in the "difficult and sensitive balancing process" by which a court determines whether your Speedy trial right has been denied.

II < Police Misconduct by the arresting officer (Michael White) >

The Law Regarding the eight Amendment, Generally, There are three basic types of Eighth Amendment Claims. (1) excessive force (2) deliberate indifference to serious medical needs, and (3) conditions of confinement, See: generally McCain Vs Scott, 9 F. Supp. 1365, 1371-72 GA. (1998)

The Petitioner claim officer white used excessive force See Exhibit (A) "A year or two before this incident, Officer White had threatend "to get" the defendant See Exhibit (B) Michael White admitted that he was angry at the defendant Exhibit (C) Officer White threatened to "blow some holes in his Fucking legs" Exhibit (C) Officer White brought the defendant's hands high enough up to hurt him. He picked him up off the ground and Sprayed pepper spray (which the defendant called "mace") into his eyes while he was hand cuffed. The officer (white) walked him toward the cruiser with the defendant in a bent over position, with his hands above his head and his face close to the ground. The officer said, "I told you I was going to "get you." Exhibit D. Officer White Knew that cool

air has a soothing effect on the pain and discomfort caused by pepper Spray. Mr Sampson said the temperature inside the cruiser was 75 to 80 degrees and Officer White rolled up the windows, turned the heat on and left him in the Cruiser for about 15 to 20 minutes. His eyes were burning and he felt miserable. Defendant was trying to get the officer's attention, yelling, "Yo, open the dam window. I am suffocating in here" Mr Sampson said that Officer white open the back door of the cruiser and sprayed his face again with the pepper Spray. Exhibit (A) Mr. Sampson was standing in front of his cousin's business and officer white grabbed him and threw him against the wall.

<Perjured Testimony>

The knowing presentation or use of perjured testimony before a jury should invalidate the indictment and merit a dismissal See: US V. Thompson, 576 F.2d 784, 786 (9th Cir. 1978); US V. Basulto, 497 F.2d 781, 785-86 (9th Cir 1974) SEE: Exhibit (E) "Michael White testified that there

were no marks on the Kevlar
 Exhibit (E) Officer Ward said there was
a mark on the Kevlar
 Exhibit (D) Michael White testified that
a back window in the Cruiser was open
 Exhibit (D) Officer Ward acknowledged
that both the back windows and the
front windows were closed, and the heat
was on.

III <It was prejudicial error to
refuse to instruct the jury on an
Arrestee's right to use self-defense
against an officer's use of excessive
or unnecessary force.>

Defense counsel asked the judge to
 instruct the jury regarding self-defense.
 The judge declined to give this instruction.
 The failure to so instruct the jury
 constituted harmful error. <State Law>

"A criminal defendant is entitled
 to an instruction on the law relating
 to self-defense including the common-
 wealth's burden of proof on the issue
 if the evidence, viewed in the light most
 favorable to the defendant. See:
Commonwealth v. Paton, 31 Mass. App. Ct 460
 463 (1991) Also See: Brown v. United States

41 S.Ct. 501, 256 US 335 (1921)
 <Federal Law>

Generally, a defendant is entitled to a self-defense instruction if he produces some evidence concerning the justification for a homicide or an assault. De Groot v. US, 178 F.2d 244, 251 (1935) see: US v. Garner, 529 F.2d 962, 970 (6th Cir), cert. denied, 426 US 922 (1976) (defendant need only present some evidence on theory of self-defense to warrant instruction) Even where the evidence leaves "little room" for a self-defense claim. US v. Morton, 999 F.2d 435, 437 (9th Cir 1993)

When the force used is deadly force, an instruction is warranted where the evidence, taken in the light most favorable to the defendant, shows the defendant had a reasonable belief that he was in imminent danger of death or serious bodily harm and that no other means will suffice to prevent such harm. Commonwealth v. Bastarache, 383 Mass. 86, 105 (1980)

To be entitled to an instruction about self-defense by non-deadly force, the evidence, taken in light most favorable

to the defendant, must warrant reasonable apprehension by the defendant that he (1) is in danger of personal harm; (2) can avoid personal harm only by resort of force; (3) attempted to avoid physical combat or was unable to do so before resorting to force; and (4) used only the force necessary in the circumstances. Commonwealth V. Alebord 40 Mass. App. Ct. 915, 915-916 (2000). SEE: Commonwealth V. Galvin 779 NE. 2d 998, 56 Mass. App. Ct 698 (2002) Citing "the court was required to instruct the jury on use of nondeadly force in Self-defense

The rules pertaining to self-defense have particular application in cases where a police officer is alleged to have used excessive force in his attempt to subdue the defendant. Even if an arrest is lawful, if excessive or unnecessary force is used to subdue an arrestee, the arrestee may defend himself by employing such force as reasonably appears to be necessary. Commonwealth V. Moreira, 388 Mass 596, 601 (1983)

The questions whether the officer used excessive force and whether the arrestee used reasonable force to resist

... the excessive force are questions of
 ... fact to be resolved by the jury on
 ... proper instruction. The fact finder
 ... Should be instructed to determine
 ... whether the arrestee conduct was
 ... reasonable in light of all the circumstances

... In his opening statement defense
 ... Counsel raised the self-defense issue,
 ... telling the jury that any aggressive
 ... actions by the defendant were justified
 ... because they were taken "in self defense"
 ... in order to protect himself from
 ... the inappropriate and unnecessary
 ... conduct of Mr. White. The Judge's
 ... refusal to give the requested
 ... instruction effectively foreclosed
 ... Counsel from arguing this theory
 ... to the jury in closing.

... "Where evidence exists, from
 ... whatever source, to support a defendant's
 ... claim that he used nondeadly force
 ... in self-defense, he is entitled to
 ... an instruction on the use of non-deadly
 ... force in self-defense. Commonwealth
 ... v. Baseler, 419, Mass. 500, 503 (1995)

... In this case, both the Commonwealth
 ... and the defendant agreed that Officer
 ... White had sprayed Mr. Sampson with
 ... Pepper spray. The Commonwealth

Presented evidence of a struggle, with the defendant flailing his arms, punching, kicking and screaming, and was forced to bend over, with his hands above his head and his face close to the ground. From this evidence, the jury could easily have accepted the officer's testimony that the defendant had engaged in a struggle with him but could have found that the struggle ensued after the officer used excessive force, hurting the defendant's shoulder, and spraying him with mace, and forcing him into a contorted position. Given an instruction on self-defense, the jury could have reasonably concluded that the defendant used force, but that the force was reasonable to resist the excessive force used by the officers.

on the charge of assault and battery by means of a dangerous weapon, the Jury were instructed that the Commonwealth was required to prove beyond a reasonable doubt that the defendant touched

Michael White "without having any right to do so." Absent an instruction regarding what factors constituted a right to do so, the jury could not have found beyond a reasonable doubt that the Commonwealth had proved this element. Likewise, on the

Charge of assault and battery on a police officer, the jury were instructed that the Commonwealth was required to prove beyond a reasonable doubt that the battery was committed "without justification or excuse." Absent an instruction regarding what factors constituted a justification or excuse, the jury could not have found beyond a reasonable doubt that the Commonwealth had proved this element. By refusing to give an instruction on self-defense, the trial judge removed from the jury an essential fact-finding function.

<Relief Sought>

Wherefore, Petitioner Ricardo Sampson moves this Honorable Court to grant the following relief.

a. Accept jurisdiction over this case pursuant 28 U.S.C. § 2241, 2243

b. Require the respondent to answer the allegations in this Petition and the Brief in Support;

c. Hold such evidentiary hearing as

this Court may deem necessary or appropriate.

d) Issue an order that this Court will grant a Writ of Habeas Corpus unless the State holds a new trial within a specified time;

e.) Issue a Writ of Habeas Corpus freeing Petitioner from his Unconstitutional Confinement

Date: 03-08-05

Respectfully Submitted

R. Sampson

Ricardo Sampson
Petitioner

26 Long pond Road
Plymouth, Ma. 02360

Certificate of Pro-Se Counsel

Ricardo Sampson, pro-se, hereby Certifies that the statements of fact in the accompanying Petition and Brief are true to his knowledge,

and that statements made on information
and belief are true to the best of his
knowledge and belief

Date: 03-08-05

Respectfully Submitted

R. Sampson

Ricardo Sampson
26 Long pond Rd
Plymouth, ma. 02360